

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

ANTHONY LAMAR BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON)	
)	
STATE OF SOUTH CAROLINA)	
VS.	)	Indictment No.:
ANTHONY L. BROWN,	)	2004-SS-15-0420/C421
)	
DEFENDANT.)	

PLEA

held before the Honorable Carmen T. Mullen
Mia Perron, Official Court Reporter, 14th Judicial Circuit
in the Colleton County Courthouse
Walterboro, South Carolina
on Tuesday, March 13, 2007, Commencing at 9:57 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 14th Judicial Circuit
Post Office Box 2865
Bluffton, South Carolina 29910
1-706-231-6028

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EXHIBITS

[None]

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PROCEEDINGS

THE COURT: Solicitor.

MR. ALEXANDER: Please the Court. Your Honor, I have been informed that the defendant, Anthony Lamar Brown, wishes to change his plea from not guilty to guilty. I've handed up the sentencing sheets. He is present, along with his attorney, Ken Tootle.

THE COURT: All right. Please have Mr. Brown come forward.

Mr. Tootle, have you explained, and does Mr. Brown understand, the charges against him, the possible punishment, and his constitutional rights?

MR. TOOTLE: Your Honor, we've explained those in detail, and he does understand.

THE COURT: Thank you, sir. Does Mr. Brown wish to plead guilty to the murder charge and armed robbery charge, sir?

MR. TOOTLE: Yes, Your Honor, he does.

THE COURT: Is that correct, Mr. Brown?

MR. BROWN: Yes, ma'am.

THE COURT: All right. Sir, based on your investigation, Mr. Tootle, does the State have adequate evidence to prove his guilt on these two charges beyond a reasonable doubt, sir?

MR. TOOTLE: I believe the State does possess
MIA PERIOD, CCP, CWR-CX

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1 that evidence, Your Honor.

2 THE COURT: Mr. Brown, how old are you, sir?

3 MR. BROWN: Twenty-five.

4 THE COURT: How far did you go in school?

5 MR. BROWN: Graduated.

6 THE COURT: High school?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: What type of work do you do, sir?

9 MR. BROWN: The last work I did was concrete,
10 before I came in.

11 THE COURT: All right. Sir, are you married?

12 MR. BROWN: Single.

13 THE COURT: Do you have any children?

14 MR. BROWN: None.

15 THE COURT: All right. Sir, have you taken any
16 medication or drank any alcohol in the last twenty-four
17 hours?

18 MR. BROWN: No.

19 THE COURT: Do you suffer from any mental or
20 physical infirmity that would prevent you from
21 understanding what we are doing here today?

22 MR. BROWN: No.

23 THE COURT: All right. Sir, the first
24 indictment is for armed robbery. It is indictment
25 number 2004-GS-15-421. This indictment states that you
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1 did in Colleton County on or about April 13th of 2004,
 2 while armed with a deadly weapon, a handgun, take from
 3 the person or presence of the victim, a Ms. Carolyn
 4 Maloney, by means of force or intimidation, goods or
 5 monies belonging to Ms. Maloney, and it's described in
 6 the indictment as a purse, a bank bag, and a diaper
 7 bag, sir. Do you understand the charge contained in
 8 the indictment?

9 MR. BROWN: Yes, I do.

10 THE COURT: How do you wish to plead to it, sir?

11 MR. BROWN: Guilty.

12 THE COURT: Sir, are you pleading guilty to this
 13 charge because you are, in fact, guilty?

14 MR. BROWN: [No response]

15 MR. ALEXANDER: Your Honor, excuse me. I failed
 16 -- this is negotiated for a forty-year sentence on the
 17 murder charge and thirty years concurrent on the armed
 18 robbery. We've indicated that on the plea sheet, but I
 19 failed to mention it when I called it.

20 THE COURT: That's all right.

21 Mr. Brown, let me just explain that to you.
 22 Because it is a negotiated sentence between the
 23 solicitor's office and your attorney, I have no choice
 24 to either -- I can only accept it or reject it. In
 25 other words, I can't give you any other sentence than

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1 what your two -- the solicitor's office and your
2 attorney have negotiated this to. So, sir, if for any
3 reason I hear the facts of this case, if I decide for
4 some reason I can't follow the negotiation, I will tell
5 your attorney and I will allow you to withdraw the
6 plea. Okay, sir? Do you understand that?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: All right, sir. Sir, the second
9 indictment is indictment number 2004-GS-15-420. It is
10 a charge for murder. This indictment states that you
11 did in Colleton County on or about April 13th of 2004
12 feloniously, willfully, and with malice aforethought
13 kill Ms. Carolyn Maloney by means of shooting her and
14 that she did, in fact, die in Colleton County as a
15 proximate result of that gunshot on the 13th day of
16 April, 2004.

17 Sir, do you understand the charge contained in
18 this indictment?

19 MR. BROWN: Yes, I do.

20 THE COURT: And how do you wish to plead to it,
21 sir?

22 MR. BROWN: Guilty.

23 THE COURT: And are you pleading guilty, sir, to
24 this charge because you are, in fact, guilty?

25 MR. BROWN: Yes, ma'am.

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1 THE COURT: Mr. Brown, you need to understand
 2 that while the scilicitor's office has negotiated, as we
 3 said, a forty-year sentence for the murder charge and a
 4 thirty-year sentence for the armed robbery charge, the
 5 two of them to run concurrent, which means at the same
 6 time, that these possible charges could carry -- a
 7 murder charge carries up to life, sir, as you well
 8 know, and the armed robbery charge, sir, carries ten to
 9 thirty years. Do you understand that, sir?

10 MR. BROWN: Yes, ma'am.

11 THE COURT: Sir, additionally, these charges are
 12 both deemed most serious and violent offenses. What
 13 that means, sir, is that if you are convicted of
 14 another most serious offense, you will be looking at
 15 life without parole. Do you understand that, sir?

16 MR. BROWN: Yes, ma'am.

17 THE COURT: And understanding that, sir, do you
 18 still wish to plead guilty?

19 MR. BROWN: Yes, I do.

20 THE COURT: Sir, additionally, when you plead
 21 guilty, you give up important constitutional rights.
 22 As you know, we started your trial yesterday, or we
 23 pulled a jury in this case yesterday. Sir, in a jury
 24 trial, you have a right to remain silent. No one can
 25 ever make you testify against yourself. If you chose

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1 not to testify in a case, sir, I would instruct a jury
 2 of twelve people they couldn't hold it against you.
 3 Additionally, sir, at a jury trial you would be
 4 presumed innocent until and unless a jury, in fact,
 5 found you guilty. And that is something that is a
 6 cloak of innocence that would accompany you from the
 7 beginning of the trial -- or actually it started from
 8 the beginning of arraignment, through the process,
 9 until and unless a jury convicted you. Do you
 10 understand that?

11 MR. BROWN: Yes, ma'am.

12 THE COURT: Sir, do you understand that at a
 13 jury trial your attorney, Mr. Tootle, would have the
 14 opportunity to cross-examine the State's witnesses, as
 15 well as present witnesses in your defense? Sir,
 16 additionally, at a jury trial Mr. Tootle would have the
 17 opportunity to attempt to suppress possible evidence.
 18 It could be statements, it could be a murder weapon, it
 19 could be anything, sir, and I don't know the specific
 20 facts of your case to tell you whether or not he would
 21 be successful. But, sir, do you understand and
 22 appreciate by not having a jury trial you are waiving
 23 this right to have this evidence suppressed?

24 MR. BRCWN: Yes, ma'am.

25 THE COURT: All right, sir. And I want you to
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1 fully appreciate and understand that by pleading guilty
2 here today, you are not going to get a jury trial. Do
3 you understand that?

4 MR. BROWN: Yes, ma'am.

5 THE COURT: All right, sir. And do you
6 understand that you are going to have convictions on
7 your record for both murder and armed robbery? Do you
8 understand that, sir?

9 MR. BROWN: Yes, ma'am.

10 THE COURT: All right, Mr. Brown. And
11 understanding all that, sir, do you still wish to go
12 forward and plead guilty to these two charges?

13 MR. BROWN: Yes, I do.

14 THE COURT: All right. Solicitor, other than
15 the plea negotiations that you've put on the record, is
16 there anything further, any other charges that are
17 being dismissed, or anything else that needs to be put
18 on the record?

19 MR. ALEXANDER: No, Your Honor.

20 THE COURT: Okay. Is that correct, Mr. Tootle?

21 MR. TOOTLE: That is correct.

22 THE COURT: All right. Sir, are you completely
23 satisfied with how Mr. Tootle has represented you?

24 MR. BROWN: Yes, I am.

25 THE COURT: Have you spoken to him for as long

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1 and as often as is necessary to defend you in this
2 matter?

3 MR. BROWN: Yes, ma'am.

4 THE COURT: Have you understood all your
5 conversations with him?

6 MR. BROWN: Yes, I have.

7 THE COURT: Sir, do you need any additional time
8 to talk with Mr. Tootle right now before I accept your
9 plea and sentence you, sir?

10 MR. BROWN: No, ma'am.

11 THE COURT: Do you have any complaints
12 whatsoever against Mr. Tootle?

13 MR. BROWN: No, ma'am.

14 THE COURT: Sir, has anyone promised you
15 anything or held out any hope of reward to get you to
16 plead guilty?

17 MR. BROWN: [Indicates negatively]

18 THE COURT: Sir, has anyone pressured you,
19 threatened you, or told you you had to plead guilty
20 here today?

21 MR. BROWN: No.

22 THE COURT: Sir, has anyone mistreated you from
23 law enforcement or the solicitor's office regarding
24 these charges?

25 MR. BROWN: No.

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1 THE COURT: Sir, have you understood all of my
 2 questions?

3 MR. BROWN: Yes, I do.

4 THE COURT: Mr. Brown, have you been truthful in
 5 your responses to the Court?

6 MR. BROWN: Yes, I have.

7 THE COURT: Sir, you have the right to appeal
 8 this guilty plea and any sentence this Court gives you,
 9 but you must do so within ten days of today's date. If
 10 you can't afford an attorney for an appeal, one will be
 11 appointed for you at no cost to you. Do you understand
 12 that, sir?

13 MR. BROWN: Yes, ma'am.

14 THE COURT: All right, sir. I'm going to have
 15 the solicitor give the facts of the case.

16 MR. ALEXANDER: Please the Court. Your Honor,
 17 on April the 13th of 2004, a little before noon, Carol
 18 Maple went to the office of Maloney Concrete, which is
 19 located on the frontage road called [REDACTED] Road right
 20 out at Exit 54. It's right on the Interstate in
 21 Colleton County. She had gone by there that morning
 22 and dropped her mother off and her two children. She
 23 had a twenty-month-old and a five-month-old, [REDACTED]
 24 [phonetic], who -- I've got the other child's name.
 25 But the grandmother was watching them in the office of
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1 Maloney Concrete.

2 She was using her mother's car to run some
3 errands. She left there. Mr. Maloney had left home,
4 William Maloney, who owns the concrete company and is
5 married to Carolyn Maloney. He had left home and gone
6 to Rose Oil and to Car Quest for some auto parts. It
7 was raining that day, and they weren't working. They
8 also had a funeral to go to that afternoon.

9 He went by the shop, saw his wife around 9:00,
10 9:30, and the grandchildren, and then he went on home
11 and was working on his truck. He got a call from his
12 wife on his cell phone around 10:30, 10:00 to 10:30.
13 And the daughter called her mother regarding lunch
14 about 11:11 and received no answer at the concrete
15 company. She went ahead and bought lunch and went to
16 the office, and when she came in the door she found her
17 mother slumped over in the chair where there was a
18 great deal of blood. Her children were covered in
19 blood. She called 911. They gave her instructions
20 about how to administer CPR. She was unable to move
21 her mother, and while she was doing this, fire and
22 rescue arrived, and law enforcement. And the coroner's
23 office came, and she was pronounced dead.

24 She was autopsied by Dr. Presnell at MUSC, and
25 the cause of her death was a gunshot wound that entered
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her right temple and exited below her left ear. A bullet casing and the bullet projectile were recovered at the scene, and analyzed by SLED, and determined to be .380 caliber.

5 One of the things found at the scene by the SLED
6 forensic team were footprints along the roadway. And
7 they were of a small size. And known to local law
8 enforcement was an individual by the name of April
9 Hampton. April Hampton was contacted at her mother's
10 home and there, with the mother's consent, they
11 recovered a pair of Niki shoes that matched the pattern
12 in the road.

13 Initially, April Hampton denied any knowledge
14 of -- denied they were her shoes, claimed they were her
15 sister's, and denied any knowledge. Later she admitted
16 that they were her shoes and she had worn them that
17 day, and she began cooperating with law enforcement.
18 This was around April the 22nd. On April the 28th,
19 four individuals were under arrest: April Hampton; a
20 Ray Nelson; Anthony Terez Brown; and the defendant,
21 Anthony Lamar Brown.

Prior to exercising his right to counsel, Anthony Terez Brown assisted police in recovering a .380 pistol. This pistol was submitted to SIED, and it, along with the casings -- casing and bullet

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1 projectile were analyzed by Agent Defreeze at SLED and
2 it was determined that that was the weapon that had
3 been utilized to shoot Ms. Maloney. The story came out
4 that this weapon had been provided by Anthony Terez
5 Brown. This was a stolen weapon, had been reported
6 stolen roughly a year earlier out of Mullins, South
7 Carolina. We had an ATF report. Anthony Terez Brown
8 said he purchased it on the street in Florence, and he
9 said that this is the gun that he provided to Anthony
10 Lamar Brown.

11 The four individuals: Ray Nelson was the
12 driver. He had a car, a Nissen Pulsar, which they
13 matched the tire treads on and all. They went to the
14 concrete plant. Originally it was said that Anthony
15 Lamar Brown, the defendant, also known as Banks, was
16 going to pick up a paycheck, that he had formerly
17 worked there. He -- the two Browns, Anthony Terez
18 Brown and Anthony Lamar Brown, went into the office.
19 Punky, also known as April Hampton, was on the roadway
20 as a lookout, and Ray Nelson was in the car.

21 They went in. Anthony Terez Brown exited with a
22 duster bag and Ms. Maloney's purse. Mr. Anthony Lamar
23 Brown exited with some type of money bag. They rode
24 around. Ultimately, the bag was disposed of in a drain
25 over near the stadium. Ray Nelson was told to hide the

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purse and the diaper bag, and it was done down in Green Point [phonetic] area. He assisted officers in recovering that; and still had identifications of Carolyn Maloney in it.

The other two defendants also indicated Anthony Lamar Brown carried the murder weapon into the place of business. One of them indicated they heard the shot. Anthony Terez Brown indicated he left first and he also heard a shot. This -- that was how far the case had progressed up until about April the 28th. Finally got all the SLED information and all back. And Ray Nelson and April Hampton were cooperating.

Anthony Terez Brown exercised his rights of counsel. He had asked to talk with me way back then, and when he exercised his right to counsel I ceased conversation with him. And then he went through a series of lawyers. And when he finally was represented by Mr. James Wegman, who is present in court, Mr. Wegman came to me. There were some irregularities in some of the things concerning Anthony Terez Brown, so I'm -- for his truthful testimony, I agreed to allow him to plead straight up to armed robbery and to dismiss the murder charge. So with that, I conversed with him and he agreed to testify. We were prepared to utilize him in the trial of the case, and I'm prepared

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1 to honor that plea agreement.

2 The only agreement with the other two defendants
 3 was that I would give their consideration. They were
 4 still looking at the murder and armed robbery charges.
 5 I've told their attorneys that I believe in treating
 6 people as to their culpability. And it is my honest
 7 belief that these three other codefendants did not
 8 realize that the life was going to be taken. I've
 9 emphasized to them what a dangerous adventure this was
 10 because whenever you deal with this type of felony, the
 11 law treats it as a logical consequence when death
 12 ensues.

13 But because I've discussed all the pros and cons
 14 with the family, Mr. Maloney, his daughter Carol, and
 15 other members of the family are here, and I made them
 16 aware of my offer for a negotiated sentence last week,
 17 and they were in agreement. I spoke specifically with
 18 Mr. Maloney. Then he contacted me and told me he had
 19 talked with his children. I believe this is the best
 20 disposition of the case.

21 Mr. Brown has a juvenile conviction that I
 22 didn't really take into consideration in the case. But
 23 other than that -- because I think he's only twenty-
 24 something years old now. That's all.

25 THE COURT: Solicitor, do any of the victims

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want to speak, sir, or the victim's family?

MR. ALEXANDER: Anyone wish to address the Court? Any of the family.

THE COURT: All right.

MR. ALEXANDER: I mean, as I said to Mr. Maloney, and I told the family, I did not want them to think in any way that I was belittling the life of a fifty-four-year-old mother and grandmother and wife. And I just felt like it was -- I didn't want to have to put the daughter back through what she observed, I didn't want to have to put Mr. Maloney through -- he suffered a lot, because when they started out, he was treated as a suspect, and, you know -- and that upset him. And I've explained all of that, that law enforcement was doing their job. And I believe this is the best resolution of the matter.

THE COURT: All right.

MR. ALEXANDER: Thank you, Your Honor.

THE COURT: It's my understanding, Mr. Alexander, the two children were not harmed; is that correct?

MR. ALEXANDER: Well, not physically harmed, Your Honor. I think we're still waiting to be seen how they're doing mentally. Right, Ms. Maple?

MS. MAPLE: Right.

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1 THE COURT: And it's a twenty-month-old. And
2 what was the other age of the child?

3 MR. ALEXANDER: Five months.

4 MS. MAPLE: Almost four months.

5 MR. ALEXANDER: Almost four months. Excuse me.

6 THE COURT: Four months. Okay. An almost four
7 months, and twenty-month-old. But they physically were
8 not harmed in any way?

9 MR. ALEXANDER: No, ma'am. And that was the
10 concern. Because they had so much of the grandmother's
11 blood on them, the officers immediately got EMS and all
12 the -- you know, after they had checked Ms. Maloney and
13 she -- they ran an EKG there, it was flatline, and her
14 carotid and wrist pulse were checked by Lieutenant
15 Stallings [phonetic], and no pulse was found when they
16 arrived. And as I said, that was around 11:55 to noon.
17 And we feel like she was shot before 11:00.

18 THE COURT: All right. Thank you, solicitor.

19 Mr. Brown, sir, do you willingly admit that Ms.
20 Maloney was, in fact, killed; is that correct?

21 MR. BROWN: Yes, ma'am.

22 THE COURT: All right, sir. And y'all had gone
23 in there to steal money? Was that the purpose?

24 MR. BROWN: Yes, ma'am.

25 THE COURT: And, in fact, did you shoot her?

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1 MR. BROWN: No, I didn't.

2 THE COURT: Okay. Did someone else that was
3 with you there shoot her?

4 MR. BROWN: Yes, it was.

5 THE COURT: Okay. Who was that, sir?

6 MR. BROWN: It was Terez Brown.

7 THE COURT: Mr. Tootle, have you explained to
8 him the hand of one is the hand of all, and have y'all
9 discussed this?

10 MR. TOOTLE: Yes, Your Honor, we've discussed
11 that.

12 THE COURT: Okay. Could I have both attorneys
13 come forward just for a moment, please.

14 [Whereupon, a bench conference is held]

15 THE COURT: Mr. Tootle?

16 MR. TOOTLE: Your Honor, I listened very
17 carefully to the solicitor's comments and they are, in
18 fact, one pretty accurate version of what occurred. I
19 don't think there's any doubt that there was four
20 people that were involved in much more than mischief.
21 I don't think that there was any doubt that April
22 Hampton and Ray Nelson misunderstood what was happening
23 at all. There is some significant evidence that shows
24 that April Hampton was instrumental in obtaining the
25 gun from Terez Brown; that actually there is some

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1 evidence that may lead to believe that there was more
2 than one gun involved, that there were actually two
3 guns involved.

4 Lamar Brown, my client, the defendant who is
5 pleading guilty, readily acknowledges that he went into
6 the cement company for the purpose of robbing that
7 company; that he did, in fact, have in his possession a
8 pistol with which to rob that company. It's his story
9 that -- and his belief that Terez Brown likewise had a
10 pistol with him and that Terez Brown's pistol was the
11 one that was used by Terez Brown to kill Ms. Maloney.

12 I've been in this case for almost three years,
13 Judge, and through that time Lamar Brown and I have
14 discussed many, many, many times the concept that if
15 you have -- if you have more than one person involved
16 in a crime, that the hand of one is the hand of all;
17 that if any one person was to shoot and kill a woman in
18 a situation like this, that all four are charged with
19 murder; and that under the law all four could be
20 convicted of murder, and, actually, first degree
21 murder.

22 Mr. Brown fully understands that. The reason
23 that he's here today is because he understands that.
24 If he did not understand that, we would be going to
25 trial. But he tells me, Judge, that he understands the

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1 hand of one is the hand of all and that as a result,
2 he's here before the Court.

3 THE COURT: Thank you, Mr. Foothle. Anything
4 else you would like to tell me, sir?

5 MR. FOOTLE: Judge, he's not had a -- although
6 he appears to be a reasonably healthy young man, he was
7 from some tragic circumstances. His mother is a
8 resident of New York. His father has not been around
9 for many, many years. He was raised by wonderful and
10 loving grandparents of the Reverend and Ms. Walters,
11 Madison Walters, who have been close with me throughout
12 this case; and they're close with their grandson; and
13 actually he calls his granddaddy Daddy. So from the
14 time he was three years old, he was raised by his
15 grandfather and his grandmother, who desperately love
16 him and are trying their best to get him on the right
17 path, Judge.

18 This has torn up many families. This has not
19 only torn up the Maloney family. This has torn up the
20 Walters family. I'm convinced it's torn up the Brown
21 family, and the other families involved in this, also.
22 A very, very tragic case, Judge. I don't know of any
23 case that I've ever handled that is more tragic than
24 this, nor that had more different stories and lines to
25 it.

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1 I think that the negotiated plea is fair. Under
2 the circumstances, I think it's fair. I have talked to
3 Lamar Brown about this plea for quite some time now,
4 and he believes it to be fair under the circumstances.
5 And we ask the Judge to consider it carefully and
6 approve the negotiated plea and adopt it.

7 We would also request that the Court grant him
8 time served. He went into jail -- he was arrested for
9 this offense and went into jail on April the 28th of
10 2004.

11 THE COURT: All right, sir.

12 Mr. Brown, is there anything you would like to
13 say, sir?

14 MR. BROWN: No.

15 THE COURT: Anything further from anyone?

16 MR. ALEXANDER: No, Your Honor.

17 THE COURT: I do find a substantial factual
18 basis for this plea, that your decision to plead
19 guilty, Mr. Brown, is freely, voluntarily,
20 intelligently, knowingly, and with consent of competent
21 counsel with whom you tell me you're satisfied, sir,
22 and I will accept your plea. Additionally, sir, I will
23 accept the negotiated sentence as negotiated between
24 your attorney and the solicitor.

25 On indictment number 2004-GS-15-420 -- it's for

X/A PEPPER, CCP, CVB-CM

-23-

04:01:38 p.m. 11-16-2011

27/34

7344113

24

State v. Anthony L. Brown
Plea
3/13/07

murder -- the sentence of this Court is that you be committed to the Department of Corrections, sir, for a period of forty years. On indictment number 3004-GS-15-421 -- that is an indictment for armed robbery -- the sentence of this Court is that you be committed to the Department of Corrections for a period of thirty years. Those two sentences are to run concurrent to each other, sir, and you are to be given credit for the time you have served from April 28th of 2004 until present. Good luck to you, Mr. Brown.

[PLEA CONCLUDES AT 10:25 A.M.]

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State v. Anthony L. Brown

Plea

3/18/07

25

C E R T I F I C A T E

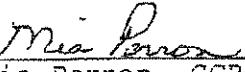
STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

I, the undersigned Mia Perron, Official Court Reporter for the 14th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the plea of Anthony L. Brown, held before the Honorable Carmen T. Mullen, on March 13, 2007.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 18th day of May, 2007.



Mia Perron
Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

-25-

26

14 mf

STATE OF SOUTH CAROLINA)
 County of Colleton)
Anthony La'Mar Brown #251490)
 Full name and prison number, if any, of applicant)
 v.)
State of South Carolina)
 Name of Respondent)
Colleton County)

In the Court of Common Pleas

08-CP-15-1038

APPLICATION FOR
 POST-CONVICTION RELIEF

2013 PLEAS - 5 11 2:31

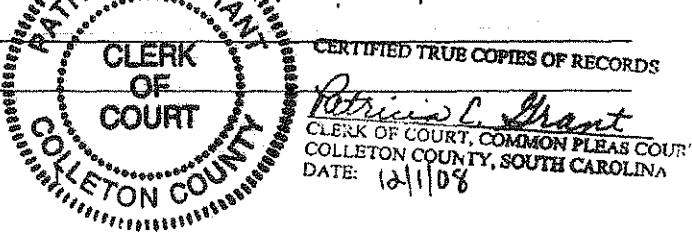
INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Perry Corr. Inst. Q1 B/204, 430 Oaklawn Rd., Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Colleton County General Sessions Court. P.O. Box 620 Walterboro, S.C. 29488
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) [REDACTED] (Murder) # 04 GS 15 - 0420
 - (b) [REDACTED] (Armed Robbery) # 04 GS 15 - 0421
 - (c) [REDACTED]
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Tuesday, March 13, 2007 (60 yrs to 30 yrs concurrent)
 - (b) [REDACTED]
 - (c) [REDACTED]



5. Check whether a finding of guilty was made

(a) after a plea of guilty YES

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

6. Did you appeal from the judgment of conviction or the imposition of sentence? YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals (Direct Appeal)

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. S.C. Court of Appeals — Dismissed & Denied.

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted July 1, 2008 — Filed July 11, 2008

ii. Unpublished Opinion No. 2008 - UP - 365

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2008 - UP - 365

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Trial Counsel

(b) Prosecutor Misconduct

(c) Judge Abuse of Discretion

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) (See Attachment) A I / A II

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

ii.

iii.

N/A

iv.

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

N/A

iv.

(c) the disposition thereof:

i.

ii.

iii.

N/A

iv.

A-(II)

Ineffective Assistance of Trial Counsel

- 8) Counsel's performance fell below an objective standard of reasonableness, and, but for counsel's errors there is a reasonable probability that the result at trial would have been different.
- 9) Failure to comply to the mandate set forth in advising the voluntariness of the guilty plea phase.

Prosecutorial Misconduct

- 1) Failure to disclose deal agreement made by Co-Defendants/ witnesses.

Judge Abuse of Discretion

- 1) Trial Judge erred/abused its discretion when:
 - a) It failed to sustain during the guilty plea phase that the applicant's plea was given freely & voluntary.
 - b) It failed to give a complete "competency test" to insure applicant's competency to plea guilty.

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Kenneth L. Tootle, P.O. Box 1321, Beaufort, SC. 29901
- ii. Robert M. Pachak, P.O. Box 11589, Columbia, S.C. 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Applicant is seeking that the Trial Court's sentence and conviction be vacated; new trial or time-cut.

19. Are you now under sentence from any other court that you have not challenged?

No.

State Of South Carolina
County Of Colleton

In The Court Of Common Pleas
For The 14th Judicial Circuit

08-CP-15-1038

Anthony L. Brown,)
plaintiff)
vs.)
State Of S.C.,)
defendant)

MOTION TO COMPEL

ORDER GRANTING OR DENYING MOTION

Comes now, the above captioned plaintiff, and moves before this Honorable Court for an order compelling the Solicitor's Office for the 14th circuit to provide the plaintiff with a full and complete copy of all materials in their possession that fall under Rule 5 of the SCRCR and any other discoverable material relating to the plaintiff and his codefendants. The plaintiff has requested these same materials from the Solicitor's Office by writing Terry K. Alexander at P.O. box620, Walterboro, S.C. 29488; as well as by writing Kenneth L. Tootle; the plaintiff,s counsel who represented him in the above referenced case, at P.O. Box 1321, Beaufort, S.C. 29901. However; both have ignored the plaintiff,s request. During an institutional transfer, when the plaintiff was being transferred from one facility to another, the SCDC lost the plaintiff,s legal materials, and as the plaintiff is now going through the appeals and PCR process it is imperative that he have all of the documentation from his case. The plaintiff contends that he has tried numerous times to obtain the aforementioned materials, to no avail, and feels that an order from this Honorable Court ordering the Solicitor's Office to provide the plaintiff with the requested materials is the only way the issue will get resolved.

WHEREFORE, having shown just cause for the order requested, the plaintiff prays this Honorable Court grant the plaintiff's motion to compel.



Anthony L. Brown, plaintiff * 251490

Perry C.I. Q - 1 - B - 204
430 Oaklawn Road
Pelzer, S.C. 29669

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON)
14th Cir. GENERAL SESSIONS COURT) Plaintiff(s)
 vs.)
ANTHONY La'MAR BROWN) Defendant(s)

(Please Print)

Submitted By: Anthony L. Brown # 251490

Address:

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

08-CP-15-1038

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
 This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts
 Constructions (100)
 Debt Collection (110)
 Employment (120)
 General (130)
 Breach of Contract (140)
 Other (199)

Torts - Professional Malpractice
 Dental Malpractice (200)
 Legal Malpractice (210)
 Medical Malpractice (220)
 Notice/ File Med Mal (230)
 Other (299)

Torts - Personal Injury
 Assault/Slander/Libel (300)
 Conversion (310)
 Motor Vehicle Accident (320)
 Premises Liability (330)
 Products Liability (340)
 Personal Injury (350)
 Wrongful Death (360)
 Other (399)

Real Property
 Claim & Delivery (400)
 Condemnation (410)
 Foreclosure (420)
 Mechanic's Lien (430)
 Partition (440)
 Possession (450)
 Building Code Violation (460)
 Other (499)

Inmate Petitions
 PCR (500)
 Sexual Predator (510)
 Mandamus (520)
 Habeas Corpus (530)
 Other (599)

Judgments/Settlements
 Death Settlement (700)
 Foreign Judgment (710)
 Magistrate's Judgment (720)
 Minor Settlement (730)
 Transcript Judgment (740)
 Lis Pendens (750)
 Other (799)

Administrative Law/Relief
 Reinstate Driver's License (800)
 Judicial Review (810)
 Relief (820)
 Permanent Injunction (830)
 Forfeiture (840)
 Other (899)

Appeals
 Arbitration (900)
 Magistrate-Civil (910)
 Magistrate-Criminal (920)
 Municipal (930)
 Probate Court (940)
 SC DOT (950)
 Worker's Comp (960)
 Zoning Board (970)
 Administrative Law Judge (980)
 Public Service Commission (990)
 Employment Security Comm (991)
 Other (999)

Special Complex, Other
 Environmental (600)
 Automobile Arb (610)
 Medical (620)
 Other (699)

Pharmaceuticals (630)
 Unfair Trade Practices (640)
 Cut-off State Depositions (650)

Submitting Party Signature: Anthony BrownDate: 10/02/08

Note: Frivolous civil proceeding may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 17-36-10 et seq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF COLLETON)	
)	
	)	2008-CP-15-1038
)	
Anthony L. Brown, #251490,)	
)	
	)	Applicant,
)	
V.	)	RETURN
)	
State of South Carolina,)	
)	
	)	Respondent.
)	

The Respondent, making its Return to the Application for post-conviction relief filed November 6, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County. The Applicant was indicted at the July 2004 term of the Colleton County Grand Jury for murder (2004-GS-15-420) and armed robbery (2004-CP-15-421). Kenneth L. Tootle, Esquire, represented the Applicant. On March 13, 2007, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Carmen T. Mullen sentenced the Applicant to confinement for forty (40) years for murder and thirty (30) years for armed robbery. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals

dismissed the appeal. State v. Brown, Op. No. 2008-UP-365 (S.C. Ct. App. filed July 11, 2008).

The Remittitur was issued July 29, 2008.

Attached herewith and incorporated herein by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated July 29, 2008.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
 - a. Failed to subpoena witnesses known at the time of the guilty plea.
 - b. Failed to properly investigate and interview witnesses.
 - c. Failed to suppress insufficient warrants/indictments and Grand Jury panel.
 - d. Failed to communicate.
 - e. Failed to advise defendant of rights/consequences of pleading guilty.
 - f. Failed to make specific Brady requests that violated due process.
 - g. Knowingly and willfully withheld evidence that deprived Applicant of his right to due process.
 - h. Performance fell below an objective standard of reasonableness.
 - i. Failed to comply with mandate set forth in advising the voluntariness of guilty plea phase.
2. Prosecutorial misconduct in that prosecution failed to disclose agreements made by co-defendants and witnesses.
3. Plea judge abused discretion in failing to ensure that Applicant's plea was freely and voluntarily entered and failing to give Applicant a complete competency test.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State submits that Applicant's allegation of prosecutorial misconduct is entirely without merit. The record of the guilty plea clearly indicates that the plea was knowingly, intelligently, and voluntarily entered within the mandates of Boykin v. Alabama, 395 U.S. 238 (1969). See LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978). The Applicant has not offered any reason to depart from the truth of his statements at the plea proceeding, and bare contradictions of these statements are not sufficient to overcome the finality of the conviction. Blackledge v. Allison, 431 U.S. 63 (1977); Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975). Moreover, the Applicant has failed to specify what misconduct allegedly occurred. Therefore, the State submits this allegation should be summarily dismissed.

V.

The Applicant alleges that the plea judge abused his discretion in failing to ensure that the plea was freely and voluntarily entered and in failing to get Applicant a competency evaluation. These allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss these allegations.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

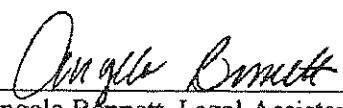
March 20, 2009.

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON) IN THE COURT OF COMMON PLEAS
)
) 2008-CP-15-1038
ANTHONY L. BROWN, #251490)
)
) Applicant,)
vs) AFFIDAVIT OF SERVICE BY MAIL
)
STATE OF SOUTH CAROLINA,)
)
) Respondent.)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kenneth L. Tootle, Esquire
P.O. Box 1321
Beaufort, SC 29902

DATED this 20th day of March, 2009



Angela Bennett, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF COLLETON	)	CASE NO.: 2008-CP-15-01038
)	
ANTHONY LAMAR BROWN,)	
)	
APPLICANT,)	
)	
V.	)	<u>TRANSCRIPT OF RECORD</u>
)	
THE STATE OF SOUTH CAROLINA,)	
)	
)	
)	

SEPTEMBER 3RD, 2010
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

ASST. ATTORNEY GENERAL MATTHEW FRIEDMAN, ESQUIRE
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
Attorney for the State of South Carolina

MR. J. D. BRYAN, ESQUIRE
209 E. WASHINGTON STREET
WALTERBORO, SOUTH CAROLINA 29488
Attorney for the Defendant

Rebecca H. Hill
522 Dowling Avenue
Walterboro, SC 29488
Official Court Reporter

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EXHIBITS

NONE.

1 **THE COURT:** Let the record reflect the calling of this
2 case that I have read the Application of Post-Conviction
3 Relief. I've read the transcript of the plea, I've read the
4 Return of the State of South Carolina, and I've reviewed the
5 sentence sheets and the indictments. Call your case.

6 **ASST. ATTY. GEN. FRIEDMAN:** Thank you, Your Honor.
7 Anthony Lamar Brown. This is docket number 2008-CP-15-1038,
8 a Colleton County case. Mr. Brown was indicted in July of
9 2004 for murder and armed robbery. He pled guilty on March
10 13th, 2007. He received a negotiated sentence of 40 years
11 for murder and 30 years for armed robbery, and those were
12 run concurrently.

13 He filed a direct appeal. He filed an Anders Brief.
14 The Court of Appeals dismissed that appeal on July 11th,
15 2008. He filed this Application on November 6th, 2008, and
16 is represented by Mr. Bryan.

17 **THE COURT:** Mr. Bryan, happy to hear from you. Are you
18 ready to call your first witness?

19 **MR. BRYAN:** Yes, Your Honor. We call Anthony Lamar
20 Brown to the stand.

21 **THE COURT:** Mr. Brown. If you'll get me my Bible, Mr.
22 Padgett, and hold it for him.

23 (Bailiff, Mr. Padgett, holds the Bible.)

24 **APPLICANT:** Your Honor, before I proceed, could I have
25 a few minutes, please, before I take the stand?

1 **THE COURT:** You need to talk to your attorney. Let
2 him know and he'll tell me. Tell your attorney.

3 (SOTTO VOICE DISCUSSION BETWEEN ATTORNEY JOHN BRYAN AND
4 APPLICANT.)

5 **MR. BRYAN:** Your Honor, he tells me that he's filed a
6 motion to relieve counsel, and I have no objection.

7 **THE COURT:** It's a motion to relieve counsel?

8 **MR. BRYAN:** Yes, Your Honor.

9 **THE COURT:** All right. Has it been served on the State
10 of South Carolina?

11 **ASST. ATTY. GEN. FRIEDMAN:** No, Your Honor.

12 **THE COURT:** Well, although they don't have complete dog
13 in the hunt, Mr. Bryan, come around here, if you would, Mr.
14 Bryan, along with your client. You know the grounds for it,
15 Mr. Bryan?

16 **MR. BRYAN:** No, Your Honor.

17 **THE COURT:** Well, I think you need to talk to him for a
18 minute so you can tell me and not just -- I'll hear his
19 motion, but I want to make sure that he doesn't say anything
20 that will hurt his case. So, talk to him and find out
21 before I hear it.

22 (SOTTO VOICE DISCUSSION BETWEEN ATTORNEY JOHN BRYAN AND
23 APPLICANT.)

24 **THE COURT:** All right. Mr. Bryan, come on around.
25 I've given you a minute so that you know the grounds of it.

1 Tell me what this is about. I'm assuming that you were
2 appointed and not retained; is that correct?

3 **MR. BRYAN:** That's correct, Your Honor.

4 **THE COURT:** All right. So you were appointed to this
5 matter. Do you know of any conflict that you might have in
6 representing this Applicant? I'm not talking about his
7 wishes, yet. I want to know if you have a conflict.

8 **MR. BRYAN:** Not really, Your Honor.

9 **THE COURT:** Are you prepared to go forward today?

10 **MR. BRYAN:** Yes, sir.

11 **THE COURT:** All right. I've given you a moment to talk
12 to him. Can you articulate, as his attorney, what he tells
13 you is the reason that he wants you relieved?

14 **MR. BRYAN:** Well, he wants me to raise issues that I
15 don't really think are valid issues, and he wants me to
16 subpoena witnesses, who I'm pretty sure would testify
17 against us; such as the co-defendants, who basically blamed
18 him in order to get out of a murder conviction, Your Honor.

19 **THE COURT:** I understand. Has your lawyer accurately
20 told me what your reason is for him moving to be relieved,
21 Mr. Brown?

22 **APPLICANT:** Not accurately.

23 **THE COURT:** All right. Is there something else?

24 **APPLICANT:** Yes, there is.

25 **THE COURT:** I want you to be careful, because it's much

1 better for you to speak through your attorney.

2 **APPLICANT:** All right.

3 **THE COURT:** And I don't want to get into any of your
4 trial strategy, because that's a matter between you and your
5 attorney. Is there some other reason that you feel like
6 your attorney cannot adequately represent you, other than
7 you disagreeing with what he believes is the best way to
8 present the case?

9 **APPLICANT:** Well, Your Honor, I understand where Mr.
10 Bryan is coming from, but I had a hard time getting into the
11 law library at Perry Correctional. I wrote Mr. Bryan on
12 several occasions for him to send me some kind of
13 documentation showing that I have court coming up in the
14 near future, so I can gain unlimited access through the law
15 library. He don't respond to my letters, or anything,
16 beside the subpoenas, the witnesses, interviews, he doesn't
17 do anything, Your Honor. I've submitted three or four
18 issues that I would like Mr. Bryan to bring up in Court.

19 **THE COURT:** Mr. Bryan, he's telling me you hadn't
20 responded to him, and, obviously, an issue of access to the
21 law library is not an issue for post-conviction relief.
22 However, I want to know whether or not you feel like you're
23 prepared to go forward on this Application which I've
24 reviewed.

25 **MR. BRYAN:** Well, I am, Your Honor, but if he'd rather

1 have another lawyer ---

2 **THE COURT:** Well, he doesn't get to decide that, Mr.
3 Bryan. You know that. I do. It's not up to him. I want
4 to know if you're prepared; not what he wishes, necessarily.
5 I have heard from him, but he doesn't decide who is an
6 appointed attorney, the Court does. Now, I need to know if
7 you're prepared.

8 **MR. BRYAN:** Yes.

9 **THE COURT:** You are?

10 **MR. BRYAN:** Yes.

11 **THE COURT:** Okay. He says you didn't respond to him
12 about the law library, but there are a number of issues
13 raised in his Application that I've just reviewed, and
14 they're articulated very well in the Application. He drew
15 it and I've reviewed every one of them. Are you ready to go
16 forward on those issues?

17 **MR. BRYAN:** Yes.

18 **THE COURT:** All right. Now, Mr. Brown, I want you to
19 understand, although I'm certainly willing to listen to you,
20 you don't decide who your appointed attorney is; do you
21 understand that?

22 **APPLICANT:** I do.

23 **THE COURT:** The Court does. Now, your lawyer tells me
24 he's ready to proceed and he has no conflict in representing
25 you. Is there anything else you want to tell me as to why

1 your lawyer ought to be relieved that you haven't told me?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. What is it?

4 APPLICANT: I filed three, four more issues. He has
5 copies of the issues that I would like to address to the
6 Court, but he hasn't done the background work, the leg work,
7 for the issues. He hasn't looked up the case laws. He
8 doesn't even know how to lead me on as to where I would
9 answer the questions properly, Your Honor.

10 THE COURT: But you know, Mr. Brown, you aren't an
11 attorney.

12 APPLICANT: I understand.

13 THE COURT: He is.

14 APPLICANT: I understand.

15 THE COURT: He has to decide what is a proper legal
16 issue, even if you disagree on what is not. Now, I don't
17 know what you are talking about, and I don't want to get
18 into your strategy, but just because you are of the opinion
19 as a layman that something is a proper issue, doesn't mean
20 that an attorney will agree with you. It's perfectly normal
21 for attorneys and clients not to always agree on legal
22 issues. Now, is there any other reason you want to tell me
23 why you believe he should be relieved, other than you don't
24 agree with what he thinks is the proper issues to be
25 presented to the Court, because I don't want to get into the

1 details, so as not to prejudice anything that I should hear
2 as a Judge? Anything else you want to tell me?

3 **APPLICANT:** That's my main concern, Your Honor.

4 **THE COURT:** Now, Mr. Bryan, Mr. Brown feels like he
5 presented some issues to you that would necessitate you
6 possibly moving to amend his Application for Post Conviction
7 Relief. Have you considered that?

8 **MR. BRYAN:** I've considered it, Your Honor, but it
9 would appear that the issues that struck me as good were
10 more of grounds supporting the ineffective assistance of
11 counsel claimed in a separate and independent issues.

12 **THE COURT:** So you feel like his Application adequately
13 addresses all of the issues necessary to protect his
14 interests?

15 **MR. BRYAN:** Yes, Your Honor.

16 **THE COURT:** Very well. Your request to have Mr. Bryan
17 relieved is respectfully denied. Come around to the witness
18 stand and be sworn.

19 WHEREUPON, APPLICANT ANTHONY LAMAR BROWN, IS DULY
20 SWORN.

21 **THE COURT:** Mr. Padgett, help him. Mr. Brown, come
22 over here. He's going to help you, because you've got those
23 leg irons on. I don't want you walking up the stairs like
24 that. Make yourself comfortable. Tap the microphone for
25 me. State your full name and spell your last name for the

Direct Examination of Anthony Brown by Mr. Bryan

1 court reporter.

2 **APPLICANT:** Anthony Brown, B-R-O-W-N.

3 **THE COURT:** Your witness, Counsel.

4 **DIRECT EXAMINATION**

5 **BY MR. BRYAN:**

6 **Q** Mr. Brown, what prison are you in currently?

7 **A** Perry Correctional.

8 **Q** And what charges are you in there for?

9 **A** Murder and armed robbery.

10 **Q** Who represented you on these charges?

11 **A** Ken Tootle out of Beaufort, South Carolina.

12 **Q** Was he appointed or retained?

13 **A** Retained.

14 **Q** How long did he represent you before you came to trial
15 or plea?

16 **A** Approximately 32 months, 33 months.

17 **Q** During that time, how many times did he come to see you
18 at the Colleton County Jail?

19 **A** Let's see, four -- three or four times.

20 **Q** Did you tell Mr. Tootle about any witnesses you had?

21 **A** Yes, I did.

22 **Q** What did you tell him about these witnesses?

23 **A** Well, I explained the number of witnesses that I had
24 and asked them what they would testify to.

25 **Q** Uh-huh.

1 **A** Well, I gave him, I think it was, Jamal Washington,
2 Lennon Stanfield, Jermaine Glover, Leslie Taylor; I can't
3 remember every name right off the top. I probably would
4 have to look inside my papers.

5 **THE COURT:** Do you have those?

6 **APPLICANT:** Yeah.

7 **THE COURT:** All right. When you're giving proper names
8 like that, make sure the court reporter can spell them
9 correctly. Go ahead.

10 **Q** What would they have testified to?

11 **A** Well, they would have testified to the fact that the
12 victim's family, when the murder happened, the victim's
13 family stated that even though they didn't know who the
14 murderer was, they stated that they was going to call my
15 name anyway. Taylor, Leslie Taylor, was the alibi. She
16 testified that I was there with her that morning, as well as
17 my grandmother. I think Jamal Washington, he testified.
18 Stanfield would have testified that Terez Brown told him
19 that I was not the trigger man and Alvin Warren was also a
20 witness. He would have testified to the fact that seeing
21 Mr. Maloney and April Hampton together, because that was the
22 connection that Mr. Tootle said that he needed, was Maloney
23 and Hampton, and I gave him that connection also. I believe
24 that's about all the witnesses, if I can remember.

25 **Q** But you discussed that with Mr. Tootle?

Direct Examination of Anthony Brown by Mr. Bryan

12

1 **A** Yes, I did.

2 **Q** Did he subpoena any of these witnesses?

3 **A** Uh ---

4 **Q** Did you see them in the courtroom the morning your case
5 was called?

6 **A** No, I didn't.

7 **Q** If he had subpoenaed these witnesses, would you have
8 pled guilty ---

9 **A** No, I would not.

10 **Q** --- or would you have gone to trial?

11 **A** I would have went to trial.

12 **Q** How much did your lawyer advise you about your trial
13 rights?

14 **A** How much did he advise me?

15 **Q** Yeah.

16 **A** The main thing I remember him advising me was before I
17 took the plea that I would be waiving certain constitutional
18 rights. That was the main advisement that he gave me, and
19 really nothing else stands too clear.

20 **Q** Just before you took the plea?

21 **A** Yeah.

22 **Q** Did he ever advise you that you had a right to be
23 proven guilty beyond a reasonable doubt?

24 **A** Not that I can remember.

25 **Q** So did your trial lawyer recommend that you hire a

1 detective?

2 **A** I didn't hear you. Excuse me?

3 **Q** Did Mr. Tootle recommend that you hire a detective?

4 **A** A private investigator?

5 **Q** Yeah.

6 **A** Sure, yes, he did.

7 **Q** Did your family hire a detective?

8 **A** Yes, we did.

9 **Q** What did he find out?

10 **A** Nothing.

11 **Q** How long were you in jail before you went to court?

12 **A** Three years.

13 **Q** And at any time, did your lawyer discuss how much time
14 you might have to serve out of a sentence for murder?

15 **A** No, I was under the impression that he said it was day
16 for day; that's my understanding that it was just day for
17 day.

18 **Q** And he told you that?

19 **A** Yes.

20 **MR. BRYAN:** No further questions of this witness, Your
21 Honor.

22 **THE COURT:** Cross examination?

23 **ASST. ATTY. GEN. FRIEDMAN:** Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 **BY ASST. ATTY. GEN. FRIEDMAN:**

Cross-Examination of Anthony Brown by Asst. Atty. Gen. Friedman

14

1 **Q** Good morning, Mr. Brown.

2 **A** Good morning.

3 **Q** At your plea hearing, do you recall that you told the
4 Court that you understood the nature of the charges against
5 you?

6 **A** Yes, I did.

7 **Q** And you told the Court that you understood the possible
8 punishments of those offenses?

9 **A** Yes, I did.

10 **Q** At that time, you also told the Court that you were, in
11 fact, guilty of those offenses?

12 **A** That I were. In fact, somewhere in the transcript, I
13 told the clerk that I wasn't guilty of this charge.

14 **Q** Do you recall that you specifically said you were
15 guilty of armed robbery; is that right?

16 **A** I do.

17 **Q** And that you said you were guilty of murder through the
18 hand of one is the hand of all?

19 **A** I told them I understand it.

20 **Q** Okay. You told the Court you were completely satisfied
21 with your attorney. Do you remember that?

22 **A** Yes, I do.

23 **Q** You told the Court that no one threatened you or
24 promised you anything to get you to plead guilty?

25 **A** Yeah.

You received a negotiated sentence; is that right?

2 A I did.

3 Q Do you understand what that meant?

4 **A** At the time, all I knew is that I was pleading. I was
5 young and naive. I didn't really understand the specifics
6 of the law.

7 Q Did you know what sentence you were receiving?

8 A Did I know what sentence?

9 Q In other words, you got 40 years for murder and 30
10 years for armed robbery; did you understand that?

11 A Yes.

12 Q You testified that you had some witnesses that you
13 wanted your attorney to subpoena?

14 A Yeah.

15 Q Did you give your attorney the names and addresses of
16 those people?

17 A Yes, I did.

18 ASST. ATTY. GEN. FRIEDMAN: Nothing further, Your
19 Honor.

20. THE COURT: Redirect?

REDIRECT EXAMINATION

22 | BY MR. BRYAN:

23 Q When you say you understood the nature of the charges,
24 was that based upon what your attorney had told you?

25 A Solely based upon it, yeah.

1 Q And when you said that you understood your trial
2 rights, was that based solely upon what your attorney told
3 you?

4 A Yes.

5 MR. BRYAN: No further questions of this witness, Your
6 Honor.

7 THE COURT: Recross, limited to redirect?

8 ASST. ATTY. GEN. FRIEDMAN: Nothing further, Your
9 Honor.

10 THE COURT: You may step down. Call your next witness,
11 Mr. Bryan.

12 MR. BRYAN: We call Jamal Washington, Your Honor.

13 THE COURT: Come around and be sworn, please, sir.

WHEREUPON, MR. JAMAL WASHINGTON IS DULY SWEARN.

15 THE COURT: Have a seat on the witness stand. Make
16 yourself comfortable. Talk into that microphone. Speak up
17 and state your full name for the record and spell your last
18 name for the court reporter.

19 APPLICANT: Jamal Washington, W-A-S-H-I-N-G-T-O-N.

20 THE COURT: All right. Your witness, Mr. Bryan.

DIRECT EXAMINATION

22 BY MR. BRYAN:

23 Q Mr. Washington, on the date of the murder, did you hear
24 Mr. Maloney and his family discussing it?

25 A On the day of the murder?

1 Q Or about that time?

2 A It was a little bit about a couple of days after that.

3 Q Okay. And what were they saying?

4 A They approached me about it. I know I was at the Shell
5 station right around the corner over there and him and his
6 son came and approached me about it.

7 Q They approached you about it?

8 A Yes.

9 Q And what did they say?

10 A They was asking me if I had seen Anthony Brown and
11 stuff like that. They was asking me if I had anything to do
12 with it.

13 Q Okay. And then what -- why were they asking about him?

14 A I don't know. I guess because they have a sister over
15 here and I don't know why. Me and him used to work at that
16 place, you know, and I don't know what kind of beef they had
17 against him.

18 Q Okay. So it was like they were looking to blame him?

19 A Yeah, pretty much.

20 **MR. BRYAN:** I have no further questions of this
21 witness, Your Honor.

22 **THE COURT:** Cross-examination?

23 **ASST. ATTY. GEN. FRIEDMAN:** I have no questions, Your
24 Honor.

25 **THE COURT:** You may step down. Call your next witness.

1 MR. BRYAN: We call Leonard Stanfield, Your Honor.

2 THE COURT: Leonard Stanfield?

3 MR. BRYAN: Yes, Your Honor.

WHEREUPON, MR. LEONARD STANFIELD IS DULY SWEARN.

THE COURT: Help him, Mr. Padgett. Is he restrained?

6 MR. PADGETT: Yes.

7 THE COURT: Watch those stairs. Have a seat. Pull the
8 chair up. Speak into the microphone. State your full name
9 and spell your last name for the court reporter.

10 WITNESS: Leonard Stanfield, S-T-A-N-F-I-E-L-D.

11 THE COURT: Your witness, counsel.

DIRECT EXAMINATION

13 BY MR. BRYAN:

14 Q Mr. Stanfield, were you ever in jail with the co-
15 defendant of Mr. Anthony Lamar Brown, a man named Anthony
16 Terez Brown?

17 A Yes, sir.

18 Q Did you -- did he ever say anything to you about this
19 charge?

20 A Direct, no, sir. I overheard a conversation. He was
21 in the cell next to me and he was talking to somebody at the
22 back window. There's a rec field in Colleton County and he
23 was talking to somebody on the rec field and I heard the
24 conversation and it was mentioned about the incident.

25. Q And what was that conversation?

1 **A** He said that he told the dude -- I don't know who the
2 dude was.

3 **ASST. ATTY. GEN. FRIEDMAN:** Objection, Your Honor.
4 That's hearsay.

5 **THE COURT:** Sustained.

6 **MR. BRYAN:** It's a statement against penal interest,
7 Your Honor.

8 **THE COURT:** Well, I don't know what the statement is.
9 There's not a jury here, Mr. Bryan. Tell me what you
10 understand the witness is going to testify to.

11 **MR. BRYAN:** That Mr. Terez Brown said that he ---

12 **THE COURT:** Not to this witness, but to someone else.

13 **MR. BRYAN:** Right, Your Honor.

14 **THE COURT:** And this witness claims to have overheard,
15 so we're now at double hearsay, but go ahead. You agree
16 it's hearsay; you just think it should be admitted under an
17 exception. So tell me what it is.

18 **MR. BRYAN:** Terez Brown basically said in his
19 conversation, and I don't think it's double hearsay, just
20 because he overheard the conversation.

21 **THE COURT:** Well, he wasn't speaking ---

22 **MR. BRYAN:** Right.

23 **THE COURT:** --- to the person that's going to be cross-
24 examined, Mr. Bryan. Go ahead.

25 **MR. BRYAN:** But basically he said that he was the

Direct Examination of Leonard Stanfield by Mr. Bryan

20

1 trigger man and that Anthony Lamar Brown wasn't even there,
2 but if they're going to blame him, he's not going to raise
3 any objections. And if that statement, you know ---

4 **THE COURT:** Now, you recognize, of course, that we're
5 not here to retry the case.

6 **MR. BRYAN:** Right.

7 **THE COURT:** Tell me, then, because apparently this
8 person was convicted of a crime in connection with this
9 incident, correct?

10 **MR. BRYAN:** Right, Your Honor.

11 **THE COURT:** And that person was present on the day of
12 your client's plea and according to what I read in the
13 transcript, was available to testify; is that right?

14 **MR. BRYAN:** (NO RESPONSE.)

15 **THE COURT:** When the plea was called, the declarant
16 that you're talking about right now, according to Mr.
17 Alexander, had changed his mind and was pleading guilty and
18 was going to testify; is that correct?

19 **MR. BRYAN:** Yes, Your Honor.

20 **THE COURT:** Now, what you want me to do is admit this
21 statement that you believe the witness is going to say
22 because it was inconsistent with what he would have
23 testified to at the guilty plea or if a trial had ensued
24 after the jury had been selected?

25 **MR. BRYAN:** Well, it would have been a statement

1 against penal interest and it would have also been a prior
2 inconsistent statement, Your Honor.

3 **THE COURT:** All right. I'll let him answer the
4 question over the objection. I think it's hearsay, but I'll
5 take it for what I think it's worth. Rephrase your question
6 and I'll let him answer it.

7 **Q** And in this conversation, did you hear Mr. Anthony
8 Terez Brown speak about this incident?

9 **A** Yes, sir.

10 **Q** And what did Mr. Anthony Terez Brown say?

11 **A** He was telling the dude on the rec field, the other
12 inmate, he was telling the other inmate that he was charged
13 with murder, but they didn't have no gun. They didn't have
14 nothing on him.

15 **Q** Did he say anything about Anthony Lamar Brown?

16 **A** Not that I remember, unh-unh, no, sir.

17 **THE COURT:** Anything further?

18 **MR. BRYAN:** Nothing further, Your Honor.

19 **THE COURT:** Cross examination?

20 **ASST. ATTY. GEN. FRIEDMAN:** Nothing, Your Honor.

21 **THE COURT:** You may step down. Call your next witness.

22 **MR. BRYAN:** We call Mr. Tootle.

23 **THE COURT:** Come around, please, sir. Be sworn by the
24 bailiff.

25 WHEREUPON, MR. KENNETH TOOTLE IS DULY SWORN.

Direct Examination of Kenneth Tootle by Mr. Bryan

22

1 **THE COURT:** Have a seat on the witness stand. Watch
2 the steps there. Pull the microphone over. State your full
3 name and spell your last name for my court reporter.

4 **WITNESS:** My name is Kenneth Lynn Tootle, T-O-O-T-L-E.

5 **THE COURT:** Your witness, counsel. Direct examination.

6 **DIRECT EXAMINATION**

7 **BY MR. BRYAN:**

8 **Q** Mr. Tootle, how long did you represent Mr. Anthony
9 Lamar Brown? The length of time?

10 **A** Probably close to two and a half years; two years, two
11 and a half years.

12 **Q** Now, you had a pretty extensive file there. Was there
13 any physical evidence placing Mr. Anthony Lamar Brown at the
14 crime scene? A gun?

15 **A** There was no gun. The gun was never found. There was
16 physical evidence at the place where Mr. Nelson carried them
17 to. Did that directly connect up with Mr. Brown? No, not
18 like DNA and stuff of that nature, no.

19 **Q** But at the crime scene, there was nothing to indicate
20 that Mr. Brown -- no physical evidence?

21 **A** At the scene itself, there was physical evidence.
22 There were gun casings, places where bullets went into the
23 wall, but specifically gun casings. There was blood. Did
24 this tie DNA to Mr. Brown? No, it did not.

25 **Q** Right.

1 A But there certainly was physical evidence there.

2 Q Right. There was physical -- I would agree there was
3 physical evidence that a crime had been committed, but was
4 there any physical evidence to connect Mr. Lamar Brown with
5 this crime? Was there anything there?

6 A There was nothing specifically to Mr. Brown.

7 Q And when the gun was recovered, it was recovered by
8 who?

9 A I don't recall a murder -- gun ever being recovered.

10 Q Mr. Tootle ---

11 A Now, please understand, you've had my file for the last
12 year and a half and I haven't had the opportunity to review
13 it.

14 Q Okay.

15 A But to the best of my knowledge, the actual weapon
16 involved in this sad situation was not recovered.

17 **THE COURT:** Mr. Tootle, at any point that you want to
18 review your file to refresh recollection, you certainly may
19 do so. I assume that box on the counsel table is your file,
20 which you provided to Mr. Bryan to prepare for this hearing.
21 So feel free if you want to at any time to do so.

22 **MR. TOOTLE:** Thank you, Your Honor.

23 **THE COURT:** Proceed.

24 Q Now, the first person to be apprehended by law
25 enforcement was April Hampton?

Direct Examination of Kenneth Tootle by Mr. Bryan

1 **A** I don't know if it was April Hampton or Ray Nelson, but
2 it was one or the other of those, and probably was April
3 Hampton.

4 **Q** And April Hampton told the police that the shoes that
5 matched the footprints found at the crime scene weren't
6 hers, but her little sister's, right?

7 **A** There was some question as to whose shoes the female
8 footprint was.

9 **Q** And then later she admitted that those were her shoes?

10 **A** Well, I think she maintained the whole time that they
11 were her sister's shoes, but that she was wearing them.

12 **Q** Is there any evidence, other than the testimony of the
13 three other co-defendants, Mr. Nelson, Mr. Anthony Terez
14 Brown, and April Hampton; was there any evidence, eyewitness
15 testimony, forensic evidence, fingerprints, physical
16 objects, anything, other than the testimony of these three
17 people, that he was even around that day? That he had any
18 connection with this crime?

19 **THE COURT:** Refer to who "he" is, Mr. Bryan.

20 **Q** By "he," I refer to Mr. Anthony Lamar Brown, our mutual
21 client.

22 **A** The evidence, the physical evidence, that was obtained
23 and that would have been presented was overwhelming that a
24 murder had occurred. The actual physical evidence itself
25 would not have been sufficient to convict Mr. Brown in my

1 opinion.

2 Q Did your client, Mr. Anthony Lamar Brown, tell you of
3 any witnesses?

4 A He did.

5 Q Okay. Did you investigate those witnesses?

6 A We did.

7 Q Did you interview those witnesses?

8 A Some personally; some through a private investigator;
9 and some witnesses were not able to be obtained.

10 Q And you had the private investigator?

11 A Yes.

12 Q And what did he find out?

13 A The main thing we were working on with a private
14 investigator was to establish the alibi that Mr. Brown was
15 with his girlfriend, Ms. Taylor, at the time that the murder
16 was committed; or he was with his grandmother. He was
17 either with Ms. Taylor, and he allegedly was with Ms. Taylor
18 and then left Ms. Taylor and went to his grandmothers, where
19 he lived. He lived with his grandmother, a wonderful woman.
20 That was the information we were provided. We attempted
21 diligently to locate Ms. Taylor. She was not in the
22 Walterboro area. We found some reason to believe that she
23 might be out in Sheldon. A thorough investigation was
24 conducted there of Ms. Taylor. Quite honestly, Ms. Taylor
25 was never located and we were not able to substantiate Mr.

Direct Examination of Kenneth Tootle by Mr. Bryan

1 Brown being with Ms. Taylor because we were not able to
2 locate her. We did substantiate that he was with his
3 grandmother.

4 **Q** Okay. So you don't remember much about the Sheriff's
5 Department investigation?

6 **A** I think I remember a good bit about it, yes, sir.

7 **Q** Huh?

8 **A** Do I remember that the Sheriff investigated the case?

9 **Q** Yeah. The details.

10 **A** Well, they had to investigate it in order to commence a
11 murder action against him. Now, what they personally did, I
12 don't know.

13 **Q** Okay. But you didn't remember that Anthony T. Brown
14 took the officers to the pistol?

15 **A** There were two pistols.

16 **Q** Right.

17 **A** There were two pistols.

18 **Q** In the State, right.

19 **A** One of them, as I understand, was never recovered.

20 **Q** And the other was turned in by Anthony Terez Brown.

21 **A** Was turned in.

22 **Q** And the ---

23 **A** And it seemed to me that that one that was turned in by
24 the other Mr. Brown would be one that would implicate the
25 other Mr. Brown.

1 | g Right.

2 A Yes.

3 | Q Right.

THE COURT: Indicate which Mr. Brown, Mr. Tootle,

5 MR. TOOTLE: Not this Mr. Brown. Not the Mr. Brown
6 we're here for today.

7 | THE COURT: Anthony Lamar Brown.

8 MR. TOOTLE: Both of them are Anthony Brown's, Judge.

9 THE COURT: One of them's Terez; one of them's Lamar.

10 MR. TOOTLE: Yes.

11 A It would implicate the Terez Brown.

12 MR. BRYAN: I have no further questions of this
13 witness, Your Honor.

14 THE COURT: Very well. Cross examination?

ASST. ATTY. GEN. FRIEDMAN: Thank you, Your Honor.

CROSS-EXAMINATION

17 BY ASST. ATTY. GEN. FRIEDMAN:

18 Q Good morning, Mr. Tootle.

19 A Good morning.

20. Q How long have you been practicing law?

21 A I'm going on my 36th year. His Honor and I were in law
22 school together.

23 Q You were retained on this case; is that right?

24 A I'm sorry?

25 Q You were retained on this case?

Direct Examination of Kenneth Tootle by Mr. Bryan
Cross-Examination of Kenneth Tootle by Asst. Atty. Gen. Friedman

1 **A** I was.

2 **Q** Do you recall if you discussed the elements of the
3 charges?

4 **A** Sir, can you speak a little plainer?

5 **THE COURT:** Come up to the microphone.

6 **ASST. ATTY. GEN. FRIEDMAN:** I'm sorry.

7 **Q** During your meetings with him, do you recall if you
8 discussed the elements of the charges and what the State was
9 required to prove?

10 **A** We discussed it many times.

11 **Q** Did you discuss potential defenses?

12 **A** We discussed many defenses.

13 **Q** I believe you testified that one of those potential
14 defenses was alibi?

15 **A** Alibi, yes.

16 **Q** And you could not locate his girlfriend; is that right?

17 **A** That is what I testified to.

18 **Q** But you were able to talk to his grandmother?

19 **A** Yes.

20 **Q** Now, when he was with his grandmother, would that have
21 been at the same time this incident occurred?

22 **A** There would be a window open there of time. His
23 grandmother remembered specifically and was able to give us
24 the time that Anthony Lamar Brown was with her, because she
25 watches certain television shows and she said, "Well, this

Direct Examination of Kenneth Tootle by Mr. Bryan
Cross-Examination of Kenneth Tootle by Asst. Atty. Gen. Friedman

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1 particular show was on," which if I recall, would have
2 placed it somewhere around 11:30.

3 Q You testified that the physical evidence was not
4 sufficient, would probably not be sufficient to convict Mr.
5 Anthony Lamar Brown?

6 A If that's all the evidence that there was, I don't
7 believe that would have convicted him, no.

8 Q Did he understand that the three co-defendants would
9 have testified against him at trial?

10 A There were three co-defendants, and all three
11 eventually were going to testify against him. Initially,
12 April Hampton had made some confessions. Her confessions
13 were subject to some serious cross-examination, because
14 actually, she had the same ending on all of them, but
15 getting there she had much inconsistencies in her
16 statements. Ray Brown had given two statements -- no, no,
17 Ray Nelson had given two statements, and there were some
18 inconsistencies there. The two Mr. Browns were not -- had
19 not given any statements all through the two years of
20 incarcerations. And quite frankly, his attorney and I had
21 worked together in developing the trial strategy, and we
22 were ready and prepared to go to trial, and there were some
23 pretty serious Carroll doctrine situations that would help
24 our clients on that. However, a week or maybe ten days
25 prior to the actual trial getting ready to commence, I was

Direct Examination of Kenneth Tootle by Mr. Bryan
Cross-Examination of Kenneth Tootle by Asst. Atty. Gen. Friedman

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1 served notice from the Solicitor's Office that Anthony Terez
2 Brown had determined to become State's evidence, cop a plea
3 to lesser included. And that did away with all the Carroll
4 doctrine strategies that we had. That left a body of
5 evidence that was very very prejudicial to anybody accused.
6 It doesn't matter who would have been accused when they see
7 this poor woman with blood running down her and blood on the
8 little baby children. She had two little children there.
9 The crime scene itself was a horrendous picture. So the
10 evidence would have substantiated that this woman was
11 murdered, talking about physical evidence. The pictures,
12 the other evidence that could have been presented was very
13 prejudicial. It was very emotionally impacting. And then,
14 if Mr. Brown was tied to that through the testimony of the
15 other three co-defendants, I'm afraid that there would have
16 no way for us to prevail.

17 Q Okay. And was this case ever on the trial docket?

18 A Sure. Actually, we -- the case was called for trial.
19 We proceeded to draw a jury on the case. Quite frankly,
20 I've practiced law for 35 years now, and I've tried a good
21 many criminal cases, and this was, without a doubt, the
22 worst jury that I have ever drawn -- and when I say that,
23 there's no bad juries. I don't mean to say that, Your
24 Honor. But for if I'm attempting to get a "not guilty"
25 verdict, this jury would not have been one that I thought

Direct Examination of Kenneth Tootle by Mr. Bryan
Cross-Examination of Kenneth Tootle by Asst. Atty. Gen. Friedman

31

1 would have been very receptive to that. I felt real bad
2 about the jury. We drew the jury on a Monday afternoon,
3 court recessed; we were getting ready to convene back on
4 Tuesday morning to commence with the first witness. I went
5 in, as I always do, and spoke with my client just before
6 going to trial. You know, everything, here it is. This is
7 what we can expect to happen. I had informed Mr. Brown for
8 probably a month before that that an offer of 40 years was
9 on the table. I think we wanted to draw the jury just to
10 see maybe do we really want to give it a shot or not. And
11 when we got back into the -- when I got back into the
12 holding area where Mr. Brown was being held, he informed me
13 then that he thought -- well, we did discuss the jury a
14 little bit, you know, had a tough draw there. He did inform
15 me that he would like to go ahead and take the 40 years, and
16 as a result of that, I went back and announced to the Court
17 that we would like to change our plea.

18 Q Okay. This was a negotiated offer of 40 years for
19 murder?

20 A It was. It was. The 30 years for armed robbery was
21 just kind of tag along. It was thrown in there to run
22 concurrent with the 40 for murder.

23 Q Whose decision was it to plead guilty?

24 A It's ultimately my client's decision to plead guilty.
25 That decision is made by a client after -- certainly, I

1 advised him what I thought our chances at trial were. So
2 did I have something to do with that decision? I presume by
3 him listening to my advice, that that had something to do
4 with his decision.

5 **ASST. ATTY. GEN. FRIEDMAN:** I have nothing further,
6 Your Honor.

7 **THE COURT:** Redirect?

8 **MR. BRYAN:** No further questions of this witness, Your
9 Honor.

10 **THE COURT:** As to this witness, any objection to the
11 witness being excused, Mr. Bryan?

12 **MR. BRYAN:** No, Your Honor.

13 **THE COURT:** Mr. Friedman, any objection to this witness
14 being excused?

15 **ASST. ATTY. GEN. FRIEDMAN:** No, Your Honor.

16 **THE COURT:** Mr. Tootle, you may step down and you are
17 excused from this hearing.

18 **MR. TOOTLE:** Thank you, Judge.

19 **THE COURT:** Call your next witness, Mr. Bryan.

20 **MR. BRYAN:** We rest, Your Honor.

21 **THE COURT:** Very well. Mr. Friedman?

22 **ASST. ATTY. GEN. FRIEDMAN:** The State has no witnesses,
23 Your Honor.

24 **THE COURT:** Mr. Bryan, I'll be happy to hear you in
25 closing arguments.

1 **MR. BRYAN:** Your Honor, we had testimony of the
2 Applicant that he had been in jail, only visited a few
3 times. Details of the law were not fully explained to him
4 in appropriate detail and certain elements were not
5 mentioned at all. The evidence, I think, in this case is
6 completely uncontradicted that he was never explained and he
7 had the right to be tried and found guilty. That the burden
8 of proof was beyond a reasonable doubt or what that was.
9 That's uncontradicted. I don't think it's in the
10 transcript. It's based on his testimony. No one denied it.
11 Furthermore, the ---

12 **THE COURT:** Mr. Bryan, I've read the transcript, and I
13 believe those questions were asked to your client prior to
14 accepting the plea by Judge Mullen. Is that not correct?

15 **MR. BRYAN:** Well, the transcript speaks for itself,
16 Your Honor. So, if I remember wrong, I remember wrong.

17 **THE COURT:** Well, you were referring to Mr. Tootle in
18 your argument.

19 **MR. BRYAN:** Right.

20 **THE COURT:** But she goes over a number of things on
21 page 8, the bottom of 8, at line 20, and it goes through
22 page 9, line 23. You have a copy of the transcript, don't
23 you?

24 **MR. BRYAN:** Oh, yes.

25 **THE COURT:** You were referring to the fact that she

1 goes over the presumption of innocence, important
2 constitutional rights, the right to remain silent,
3 opportunity to cross-examine the State's witnesses, suppress
4 possible evidence, certain constitutional rights.

5 **MR. BRYAN:** But the burden of proof I didn't see in
6 there, Your Honor.

7 **THE COURT:** All right. Go ahead.

8 **MR. BRYAN:** Furthermore, he said he had named witnesses
9 to his attorney, given him addresses, and when the time came
10 for this trial to come up, when it was called, he didn't see
11 his witnesses. They weren't there. And at that point, he
12 felt he had no choice. We would just think under all the
13 circumstances in this case, Your Honor, that counsel at the
14 trial level has fallen short of the level of competency
15 required. And that it has prejudiced him. It forced him
16 into taking a plea of guilty when otherwise he would have
17 gone to a trial. And for this reason, Your Honor, we would
18 request that the Court grant the relief requested in the
19 Application.

20 **THE COURT:** Thank you, Mr. Bryan. Mr. Friedman?

21 **ASST. ATTY. GEN. FRIEDMAN:** Briefly, Your Honor, thank
22 you. The State would submit that the Applicant has failed
23 to meet his burden. The record would reflect that the plea
24 was entered freely, voluntarily, knowingly and
25 intelligently. It was a negotiated sentence. We would

1 submit that the record reflects that he had a full
2 understanding of the consequences of the plea. He was given
3 his right to a trial. We also submit that counsel's
4 performance did not fall below an objective standard of
5 reasonableness. He hired a private investigator and tried
6 to locate all the witnesses that the Applicant gave him.
7 They were trying to establish an alibi defense, and
8 ultimately, they could not substantiate that defense. We
9 would ask that you deny this Application.

10 **THE COURT:** Very well. I'm going to ask both sides to
11 submit proposed Orders to me. Please submit them to me
12 within 30 days of today. Please submit them to me at P. O.
13 Drawer 470, Walterboro, 29488. That's P. O. Drawer 470,
14 Walterboro, South Carolina, 29488.

15 Please copy opposing counsel on your transmittal of any
16 proposed Orders to the Court. I'll be happy for you to e-
17 mail me your Order to comply with the time deadline, but I'm
18 going to require that you enclose with your Order, a self-
19 addressed, stamped envelope with sufficient postage affixed
20 thereto. So, you're going to have to ultimately mail your
21 Order to me even if you e-mail me to comply with the time so
22 that you can send me an envelope with sufficient postage.

23 If you e-mail me, I request that you e-mail me at
24 pbucknerj@sccourts.org. Anything that you e-mail me, I ask
25 that you copy opposing counsel on. I also ask as a courtesy

1 that you e-mail my law clerk a copy. His e-mail is
2 pbucknerlc@sccourts.org. If you're just going to mail me by
3 United States Mail, please also provide a working copy of
4 your proposed Order to my law clerk. Obviously, any
5 communication directed to the Court in connection with this
6 matter, please always copy opposing counsel.

7 Any questions about the proposed Order procedure from
8 the State of South Carolina?

9 **ASST. ATTY. GEN. FRIEDMAN:** No, Your Honor.

10 **THE COURT:** Any questions about the proposed Order
11 procedure from counsel for the Applicant?

12 **MR. BRYAN:** No, Your Honor.

13 **THE COURT:** All right. Let the record reflect, that I
14 will be taking back to my chambers in connection with this
15 matter, which I've reviewed, the transcript, the
16 indictments, the sentence sheet, the Application for Post-
17 Conviction Relief, as well as the Return of the State of
18 South Carolina. I also have, Mr. Friedman, the Opinion that
19 was published by the Court of Appeals in connection with the
20 Anders Brief, and I also have the final Anders Brief of the
21 Appellant in my packet. Is there any additional information
22 which counsel for the Applicant feels is necessary in order
23 for the Court to make an informed decision that has not
24 already been presented into evidence at this time, Mr.
25 Bryan?

1 **MR. BRYAN:** No, Your Honor.

2 **THE COURT:** Any additional information that the State
3 feels the Court needs in order to make an informed decision?

4 **ASST. ATTY. GEN. FRIEDMAN:** No, Your Honor.

5 **THE COURT:** Very well. The record is now closed in
6 connection with this hearing. I look forward to getting
7 your proposed Orders. Thank you very much.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas, Post-Conviction Relief Hearings, for Colleton County, South Carolina, on the 3rd day of September 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 9, 2011


Rebecca H. Hill
Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
Anthony Lamar Brown, #251490,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2008-CP-15-1038

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 6, 2008. The Respondent made its Return on March 20, 2009. An evidentiary hearing into the matter was convened on September 3, 2010 at the Colleton County Courthouse. The Applicant was present at the hearing and was represented by J.D. Bryan, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Kenneth Tootle, Esquire, testified at the hearing. Jamal Washington and Leonard Stanfield also testified at the hearing. This Court had before it the records of the Colleton County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' Opinion dismissing the direct appeal, the Remittitur dated July 29, 2008, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County. The Applicant was indicted at the July 2004 term of the Colleton County Grand Jury for murder (2004-GS-15-420)

and armed robbery (2004-CP-15-421). Kenneth L. Tootle, Esquire, represented the Applicant. On March 13, 2007, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Carmen T. Mullen sentenced the Applicant to confinement for forty (40) years for murder and thirty (30) years for armed robbery. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected.

Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Brown, Op. No. 2008-UP-365 (S.C. Ct. App. filed July 11, 2008).

The Remittitur was issued July 29, 2008.

ALLEGATIONS

*2
T/B*
The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
 - a. Failed to subpoena witnesses known at the time of the guilty plea.
 - b. Failed to properly investigate and interview witnesses.
 - c. Failed to suppress insufficient warrants/indictments and Grand Jury panel.
 - d. Failed to communicate.
 - e. Failed to advise defendant of rights/consequences of pleading guilty.
 - f. Failed to make specific Brady requests that violated due process.
 - g. Knowingly and willfully withheld evidence that deprived Applicant of his right to due process.
 - h. Performance fell below an objective standard of reasonableness.
 - i. Failed to comply with mandate set forth in advising the voluntariness of guilty plea phase.
2. Prosecutorial misconduct in that prosecution failed to disclose agreements made by co-defendants and witnesses.
3. Plea judge abused discretion in failing to ensure that Applicant's plea was freely and voluntarily entered and failing to give Applicant a complete competency test.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant testified that he met with counsel about three or four times prior to the plea. He asserted that he told counsel about several potential witnesses, including Jamal Washington, ³ Leonard Stanfield, Jermaine Glover, and Leslie Taylor. He testified that these witnesses would ^B have testified that the victim's family was going to blame Applicant even though they did not know who killed her. Applicant asserted that counsel hired a private investigator, but the investigator did not find out anything.

Jamal Washington testified that he used to work with Applicant at the company that was robbed. He asserted that the victim's husband and son approached him a few days after the murder to see if he had anything to do with it or if he had seen Applicant.

Leonard Stanfield testified that he was in jail with one of Applicant's co-defendants, Anthony Terez Brown. He asserted that he overheard a conversation between Anthony Terez Brown and someone else, but Applicant's name was not mentioned.

Plea counsel testified that he represented Applicant for about two to two and a half years. He testified that Applicant gave him the names and they were able to locate most of these witnesses. Counsel asserted that they were trying to establish an alibi defense that Applicant was

with his girlfriend or his grandmother at the time of the murder, but they could not locate his girlfriend and they could not substantiate that he was with his grandmother at the time of the murder as there was an open window of time. Counsel asserted that there was not sufficient physical evidence to convict Applicant, but the three co-defendants would have testified against Applicant at trial and it would have been an emotional trial based on the horrendous crime scene.

Counsel testified that the State made an offer for forty (40) years before trial. He asserted that the offer was still on the table when they selected a jury. After the jury was drawn, Applicant informed counsel that he wanted to plead guilty. Counsel testified that he explained the significance of a negotiated sentence and the consequences of pleading guilty. Counsel testified that he was prepared to go to trial if Applicant had elected to continue with the trial.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that Applicant's testimony was not credible while also finding counsel's testimony was credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

The record reflects that Applicant understood the nature of the charges and the possible punishments. At the plea hearing, he indicated that he was satisfied with counsel and that no one threatened him or promised him anything to get him to plead guilty. He admitted guilt at the plea hearing. This Court finds that Applicant's plea was entered voluntarily and intelligently with a full understanding of the consequences. This Court finds that Applicant understood the terms of the negotiated sentence and that it was Applicant's decision to plead guilty.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation

that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel properly reviewed the evidence with Applicant, informed Applicant of the applicable sentencing ranges for these offenses, and explained the consequences of the plea to Applicant. This Court finds that counsel obtained a favorable result for Applicant considering that Applicant was facing exposure of confinement for life plus thirty (30) years. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly contacted the witnesses that Applicant provided to him. Counsel testified that none of the witnesses could substantiate an alibi defense for Applicant. This Court finds that counsel was not ineffective for failing to subpoena witnesses for the guilty plea hearing. Counsel would have subpoenaed any witnesses that he believed were necessary for trial if Applicant had elected to go to trial.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18 day of November, 2010.



Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Walterboro, South Carolina.

7344113

84

STATE OF SOUTH CAROLINA

COUNTY OF ColletonMelvin J. Morris
 PlaintiffJohn W. Morris
 Defendant.IN THE Civilian Immigrant Plan

CASE NO.

3018 - CP - 15 - 1038MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

J. D. Bryan, Bar No. 5833
Address: P.O. Box 1111
Walterboro, SC 29488
Phone: 843-949-3445 Fax:
e-mail: her

Defendant's Attorney:

Matt Friedman, Bar No.
Address: P.O. Box 11549
Columbia, SC 29211
Phone: 803-734-3772 Fax:
e-mail: her

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: 59(c)Estimated Time Needed: 10 minutesCourt Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

Date submitted

SECTION III: Motion Fee

 PAID - AMOUNT: _____

EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

 PATRICIA C. GRANT
 COLLETON COUNTY
 COMMON PLEAS
 NOV 30 AM 11 45

State of South Carolina,	)	In the Court of Common Pleas.
County of Colleton.	)	Case No. 2008-CP-15-1038.
<hr/>		
Anthony L. Brown, #251490,)	
Applicant ,)	
v.	)	Motion.
<hr/>		
The State of South Carolina,)	
Respondent.)	
<hr/>		

Applicant moves the court to alter or amend the judgment heretofore entered in thi action, insofar as said judgment fails to address the issue of the effectiveness of counsel on the ground that Applicant was not informed about the meaning of reasonable doubt, nor was he informed that the burden of proof that the State would have to meet at the trial of the case was proof beyond a reasonable doubt.

Counsel for the Applicant affirms that he spoke with Counsel for the Respondent and attempted in good faith to resolve the matter in the motion, who recommended a 59 (e) motion.

P.B.
.....
Attorney for Petitioner.
J.D. Bryan
P.O. Box 1111
209 East Washington Street
Walterboro, S.C. 29488
(843)-549-9455.

Tue, Nov 30, 2010.

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2010 NOV 30 AM 11:49

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Anthony Lamar Brown, #251490,

Applicant

v.

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS

2008-CP-15-1038

AMENDED ORDER OF DISMISSAL

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
DEC 17 PM 4:08

This matter comes before the Court by way of Applicant's Motion to Alter or Amend pursuant to Rule 59, SCRCP, dated November 30, 2010. This Court issued an Order of Dismissal dated November 18, 2010 and filed on November 22, 2010. This Amended Order of Dismissal will supplement this Court's prior Order of Dismissal.

*#1
PAB*
 The Applicant contends that certain allegations raised at the evidentiary hearing were not adequately addressed in the Order of Dismissal, specifically ineffective assistance of counsel in that counsel did not explain the meaning of reasonable doubt and failed to inform Applicant that the State would have to prove its case beyond a reasonable doubt. This Court will now address the allegations.

This Court has considered Applicant's allegations of ineffective assistance of counsel in that counsel did not explain the meaning of reasonable doubt and failed to inform Applicant that the State would have to prove its case beyond a reasonable doubt. This Court finds that counsel properly explained to Applicant the elements of each offense and what the State was required to prove. Moreover, the plea court put on the record that the State was required to prove Applicant's guilt beyond a reasonable doubt. This Court finds that counsel informed Applicant

of his constitutional rights, including his right to a jury trial. In fact, Applicant proceeded to trial and then elected to plead guilty. This Court finds that Applicant has failed to meet his burden of showing that counsel was deficient; thus, all allegations regarding ineffective assistance of counsel are hereby denied and dismissed.

CONCLUSION

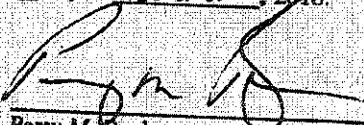
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Thus, the application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17 day of December, 2010.



Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Walhachin, South Carolina.

ARREST WARRANT

G-308170

STATE OF SOUTH CAROLINA

County/ Municipality of
COLLETON COUNTY

THE STATE
against

BROWN, ANTHONY L.

Address: WALTERBORO, SC

Name: SSN:
 Race: Height: 5'11" Weight: 140

State: DI #: _____

DOB: Agency ORI #:

Prosecuting Agency:

Prosecuting Officer:

Offense: MURDER

Offense Code: 16-3-10

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

(L.S.)
Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant BROWN, ANTHONY L.

on 5-12-04

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
K. A. CAMPBELL, JR.
P.O. BOX 1732/40-B KLEIN
WALTERBORO, SC 29480

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
COLLETON COUNTY)

AFFIDAVIT

Form Approved by
SC Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant DET. HOMERON JAMES who
being duly sworn deposes and says that defendant BROWN, ANTHONY L.
did within this county and state on 16-3-10-04 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of COLLETON)
in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

16-3-10

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT ON APRIL 13, 2004 AT HALDENE CONCRETE, LOCATED AT 1725 300TH ST.,
WALTERBORO, SC IN THE COUNTY OF COLLETON ONE APRIL HAMPTON, ANTHONY L.
BROWN, ANTHONY T. BROWN, AND RAYE NELSON DID SHOOT AND KILL CAROLYN MAJOLNEY
WHILE COMMITTING AN ARMED ROBBERY. PROBABLE CAUSE IS BASED ON WITNESS
STATEMENTS, ALL OF THIS BEING IN VIOLATION OF SC CRIMINAL CODE OF LAW,
OCA #04-1486

Sworn to and subscribed before me)
on MAY 12, 2004)
(L.S.))

K. A. Campbell 16-3-10
Signature of Affiant
Affiant's Address: 119 BENSON ST., C.C.B.D.
WALTERBORO, SC 29480

Affiant's Telephone: 843 540-3910 299-5000

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
COLLETON)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 16-3-10-04 defendant BROWN, ANTHONY L.
did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of COLLETON) as set forth below:

DESCRIPTION OF OFFENSE: MURDER

16-3-10

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address: DET. HOMERON JAMES
(L.S.) WALTERBORO, SC 29480

Signature of Issuing Judge K. A. Campbell Judge's Telephone: 843 540-3910

Judge Code: 16-3-10 Issuing Court: Magistrate Municipal Circuit

K. A. CAMPBELL, JR.
ORIGINAL

90

STATE OF SOUTH CAROLINA)
County of Colleton) INDICTMENT #04GS15-0420

At a Court of General Sessions, convened on July 19, 2004,
the Grand Jurors of Colleton County present upon their oath:

COUNT: MURDER
16-3-20

That Anthony L. Brown did in Colleton County on or about April 13, 2004,
feloniously, wilfully and with malice aforethought, kill one Carolyn Maloney by
means of shooting her and that the said Carolyn Maloney did die in Colleton
County as a proximate result thereof on or about the 13th day of April, 2004.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

Randolph Murdaugh

7344113

04:01:52 p.m. 11-16-2011

29/34

26
91

WITNESSES

Det. Hampton Jenkins

SSgt. Lesley Jamison ✓

ARREST WARRANT #:

G308170

Arrested on May 12, 2004

ACTION OF GRAND JURY

The Bell

Foreman:

Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 04GS15-0420

THE STATE OF SOUTH CAROLINA
County of Colleton

COURT OF GENERAL SESSIONS

Term: July, 2004

[REDACTED]
THE STATE

vs.

Anthony L. Brown

INDICTMENT FOR

0116

MURDER

16-3-20

92

STATE OF SOUTH CAROLINA)
County of Colleton)
INDICTMENT #04GS15-0421

At a Court of General Sessions, convened on July 19, 2004,
the Grand Jurors of Colleton County present upon their oath:

COUNT: ARMED ROBBERY
(16-11-330)

That Anthony L. Brown did in Colleton County on or about April 13, 2004, while armed with a deadly weapon, or while alleging or representing, by action or words, that he/she was armed with a deadly weapon, or other object that a person present, reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the person or presence of the victim, Carolyn Maloney, by means of force or intimidation goods or monies of said victim, such goods or monies being described as follows: purse, bank bag, diaper bag (VAC)

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

04:02:06 p.m. 11-16-2011

31/34

93
28

7344113

WITNESSES

Det. Hampton Jenkins
SSgt. Lesley Jamison

ARREST WARRANT #:

G308171

Arrested on May 12, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

Grand Jury

VERDICT

Foreman:

Petit Jury

Date: _____

DOCKET #: 04GS15-0421

THE STATE OF SOUTH CAROLINA
County of Colleton

COURT OF GENERAL SESSIONS

Term: July, 2004

[REDACTED]

THE STATE

vs.

Anthony L. Brown

[REDACTED]
INDICTMENT FOR

0139

ARMED ROBBERY

(16-11-330)

94

11/20, 2004

COLLETON COUNTY

55
10 D~~11/11/04~~

COURT OF GENERAL SESSIONS

Alternate

1

1 S —

2 D —

2

1 S —

2 D —

DATE: 3-12-07

CASE NO: 2004-GS-15-420

STATE VS Anthony L. Brown

INDICTMENT FOR Murder and Armed Robbery

ATTORNEY FOR STATE: T. K. Alexander

ATTORNEY FOR DEFENDANT: Kenneth Toole

JURORS SERVING:

52 L

78 2

37 3

4

5

6

7.

8.

9.

10.

11.

12.

ALTERNATE JUROR:

2

State

WITNESSES;

Defense

Defendant Pled Guilty before
Jurors were sworn 3/13/07

Case Sent to Jury: _____ VERDICT RENDERED: _____

VERDICT

Carmen T. Muller
 Presiding Judge

Mia Parsons
 Court Reporter